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## Proposed Regulation Agency Background Document

<b>Agency name</b>	DEPT OF MEDICAL ASSISTANCE SERVICES
<b>Virginia Administrative Code (VAC) citation</b>	12 VAC 30 -80
<b>Regulation title</b>	Methods and Standards for Establishing Payment Rates—Other Types of Care
<b>Action title</b>	Physician Emergency Room and OB/GYN Reimbursement
<b>Document preparation date</b>	

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 21 (2002) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Brief summary

*In a short paragraph, please summarize all substantive changes that are being proposed in this regulatory action.*

The substantive changes proposed in this action are the modifications to the reimbursement formula, in order to increase reimbursement, for physicians for certain emergency room procedures and obstetric/gynecological fees. These two issues will be discussed in this order throughout this document.

### Legal basis

*Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.*

The *Code of Virginia* (1950) as amended, § 32.1-325, grants to the Board of Medical Assistance Services the authority to administer and amend the Plan for Medical Assistance. The *Code of Virginia* (1950) as amended, § 32.1-324, authorizes the Director of DMAS to administer and amend the Plan for Medical Assistance according to the Board's requirements. The Medicaid

authority as established by § 1902 (a) of the *Social Security Act* [42 U.S.C. 1396a] provides governing authority for payments for services.

Increase Reimbursement for Certain Emergency Room Procedures

Chapter 4, Item 326(JJJ) of *2004 Acts of the Assembly* directed DMAS to increase reimbursements to physicians delivering Medicaid services in hospital emergency rooms.

Increase Reimbursement for Certain Obstetric/Gynecological Procedures

The Administrative Process Act (Section 2.2-4011(i)) provides for the Governor’s approval of an agency’s emergency regulations that meet the imminent threat to public health or safety standard. The Governor declared that a threat to public health exists regarding access to OB/GYN care for Medicaid and FAMIS recipients across the Commonwealth and directed DMAS to increase Medicaid and FAMIS payment rates for OB/GYN physician services by 34 percent relative to rates currently in effect. This proposed amendment would add language providing that certain physician codes be increased by 34 percent above the normal calculated amounts. In response to the Governor’s initiative and due to Virginia’s growing problem with access to obstetrical and gynecological services for Medicaid and FAMIS recipients due, in part, to stagnant reimbursement, DMAS adopted emergency regulations to provide for a needed reimbursement increase.

**Purpose**

*Please explain the need for the new or amended regulation by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal and the problems the proposal is intended to solve.*

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These proposed regulatory actions are important for the health, safety, and welfare of Medicaid recipients because improving Medicaid reimbursement for these services will enable more providers to continue to render them. This is expected to improve access to care for these services across the Commonwealth.

Increase Reimbursement for Certain Emergency Room Procedures

The purpose of this change is to conform to the legislative mandate to increase the reimbursement for certain emergency room procedures.

Increase Reimbursement for Certain Obstetric/Gynecological Procedures

The purpose of this change is to increase reimbursement for certain obstetric/gynecological procedures in order to help address the growing problem with access to this care across the Commonwealth.

## Substance

*Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (More detail about these changes is requested in the "Detail of changes" section.)*

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The section of the State Plan for Medical Assistance that is affected by this action is Methods and Standards for Establishing Payment Rates — Other Types of Care (Attachment 4.19-B), State Agency Fee Schedule for Resource Based Relative Value System (RBRVS) (Supplement 2) (12 VAC 30-80-190).

### Increase Reimbursement for Certain Emergency Room Procedures

Provisions in 12 VAC 30-80-190 describe the methodology by which the Physician Fee schedule is established and updated. As directed by the Appropriations Act, the proposed amendment would add language providing that certain physician codes for emergency room evaluation and management fees be increased by 2 percent above the normal calculated amounts.

### Increase Reimbursement for Certain Obstetric/Gynecological Procedures

The Governor's Work Group on Rural Obstetrical Care examined issues related to a growing problem of access to obstetrical and gynecological care for women of the Commonwealth. This work group has focused on multiple issues causing access to care problems in obstetrical and gynecological services (OB/GYN), such as increased cost of professional liability insurance, cultural/legal barriers to care, and reimbursement rates, among others.

Based on preliminary findings of the work group, it has been concluded that low reimbursement rates under the Medicaid and FAMIS programs are a significant factor related to the access issue in obstetrics and gynecology for Medicaid and FAMIS recipients. While the work group continues its review and evaluation of these issues, addressing low reimbursement rates for obstetrical and gynecological services will be an important part of the work group's comprehensive approach to solving this access problem.

On August 12, 2004, the Governor declared that a threat to public health exists regarding access to OB/GYN care for Medicaid and FAMIS recipients across the Commonwealth and directed the DMAS to increase Medicaid and FAMIS payment rates for OB/GYN physician services by 34 percent relative to rates currently in effect. This proposed amendment would add language providing that certain physician codes be increased by 34 percent above the normal calculated amounts.

Medicaid covers the cost of delivery for a significant percentage of the children born in Virginia through both the fee-for-service program as well as through managed care. This rate increase will be applied to both fee-for-service and MCOs.

The text in paragraph E providing for the three-year phase in of the original RBRVS methodology is no longer required as this regulation is fully effective. Therefore, this text has been stricken out in this proposed action.

**Issues**

*Please identify the issues associated with the proposed regulatory action, including:*

- 1) *the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
- 2) *the primary advantages and disadvantages to the agency or the Commonwealth; and*
- 3) *other pertinent matters of interest to the regulated community, government officials, and the public.*

*If the regulatory action poses no disadvantages to the public or the Commonwealth, please so indicate.*

These proposed changes benefit the citizens of the Commonwealth because the increases in provider reimbursement will preserve access to vital OB/GYN and emergency room services. The advantage to the agency and to the Commonwealth is that these reimbursement increases help to ensure an adequate network of providers, thereby preventing large geographic gaps of providers rendering covered services.

**Economic impact**

*Please identify the anticipated economic impact of the proposed regulation.*

<b>Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures</b>	<b>Emergency Room Increase:</b> \$140,302 GF/\$140,302 NGF (SFY 2005); \$148,719 GF/148,719 NGF (SFY 2006) <b>OB/GYN Increase:</b> \$6.31 mil GF/\$6.33 mil NGF (SFY 2005); \$7.58 mil GF/7.59 mil NGF (SFY 2006)
<b>Projected cost of the regulation on localities</b>	none
<b>Description of the individuals, businesses or other entities likely to be affected by the regulation</b>	Emergency Room physicians OB/GYNs and other practitioners providing OB/GYN services
<b>Agency’s best estimate of the number of such entities that will be affected</b>	No estimate
<b>Projected cost of the regulation for affected individuals, businesses, or other entities</b>	none

**Alternatives**

*Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action.*

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Increase Reimbursement for Certain Emergency Room Procedures

This action was directed by Chapter 4 of the 2004 Acts of Assembly, Item 326(JJJ), therefore no alternatives were available.

Increase Reimbursement for Certain Obstetric/Gynecological Procedures

This action was directed by the Governor pursuant to his declaration of a threat to the public health, therefore no alternatives were available.

**Public comment**

*Please summarize all comments received during public comment period following the publication of the NOIRA, and provide the agency response.*

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There were no comments received during the NOIRA comment period for either of these issues.

**Family impact**

*Please assess the impact of the proposed regulatory action on the institution of the family and family stability.*

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These changes do not strengthen or erode the authority or rights of parents in the education, nurturing, and supervision of their children; or encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents. It does not strengthen or erode the marital commitment, nor modify disposable family income. These changes may contribute to strengthening the family unit by improving access to health care as these fee increases are expected to increase the availability of OB/GYN services all over the Commonwealth.

**Detail of changes**

*Please detail all changes that are being proposed and the consequences of the proposed changes. Detail all new provisions and/or all changes to existing sections.*

*If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all changes between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.*

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With the exception of deleting the phase-in language formerly contained in paragraph E, these proposed regulations are identical to the current emergency regulations.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
12VAC30-80-190		Establishes the formula, based on Resource Based Relative Value Scale, for reimbursement for physician services.	Modifies formula to permit increased payments for emergency room physicians for certain evaluation and management fees; modifies formula to permit increased reimbursement to physicians for obstetric/gynecological fees.